

RFP CV-DSD-13/14

DATE 9.16.2013



NOTICE TO BIDDERS

NOTICE IS HEREBY GIVEN, THAT SEALED PROPOSALS FOR THE PROVISION OF **RENTAL ASSISTANCE PROGRAM** RFP CV-DSD-13/14, WILL BE RECEIVED UNTIL **SEPTEMBER 30, 2013 AT 3:00 P.M.**, AT THE DEVELOPMENT SERVICES HOUSING DIVISION, 276 FOURTH AVE, CHULA VISTA, CA 91910; ATTENTION: LEILANI HINES, HOUSING MANAGER. **THERE WILL BE NO PUBLIC BID OPENING.**

ALL BIDDERS ARE HEREBY REFERRED TO THE BIDDING INSTRUCTIONS, GENERAL PROVISIONS, SPECIFICATIONS, AND TERMS AND CONDITIONS IN THE ATTACHED REQUEST FOR PROPOSAL AND ON FILE IN THE OFFICE OF THE PURCHASING DIVISION. THE CITY RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS OR ANY PORTION OF ANY BID, OR TO WAIVE ANY IRREGULARITIES OR INFORMALITIES IN THE BIDS OR IN THE BIDDING.

ALL BIDS MUST BE SUBMITTED IN SEALED ENVELOPES PLAINLY MARKED WITH THE BID NUMBER AND TIME SET FOR PROPOSAL CLOSING. PROPOSALS RECEIVED AFTER 3:00 P.M. ON SEPTEMBER 30, 2013 WILL BE REJECTED.

ALL PROSPECTIVE BIDDERS ARE REQUESTED TO REGISTER ON LINE AT: www.chulavistaca.gov/cvrh. GO TO FINANCE DEPARTMENT AND FOLLOW DIRECTIONS FOR VENDOR REGISTRATION.

SUZANNE BROOKS
ACTING PURCHASING AGENT



RFP

Development Services
Housing Division
276 Fourth Avenue
Chula Vista, CA 91910
Phone: 619.691.5047
Facsimile: 619.585.5698

September 16, 2013

**REQUEST FOR PROPOSAL
FOR**

**PROVISION OF RENTAL ASSISTANCE PROGRAM
FOR CITY OF CHULA VISTA**

The Development Services-Housing Division of the City of Chula Vista is searching for a qualified consultant (referred to as "CONSULTANT") who is an expert in the management of a Rental Assistance Program ("Program") using funding from the U.S. Department of Housing and Urban Development. These funds may include HOME Investment Partnership Funds and Emergency Solutions Grant (Homeless Prevention and Rapid Re-Housing funds). The City seeks to contract with a service provider for an initial contract term from October 16, 2013 through June 30, 2014, with an option to extend for three (3) additional one (1) year periods through June 30, 2017.

For more information, please contact Jose Dorado at (619) 476-5375, or email jdorado@chulavistaca.gov. The RFP is available on the City's website: www.chulavistaca.gov/cvrh.

Sincerely,

Leilani Hines
Housing Manager

ATTACHMENT

REQUEST FOR PROPOSAL
FOR
PROVISION OF A
RENTAL ASSISTANCE PROGRAM
FOR THE CITY OF CHULA VISTA

Project Description

The City of Chula Vista ("City") is searching for a qualified Rental Assistance Program Consultant (referred to as "CONSULTANT") who has a thorough knowledge of managing and implementing a rental assistance using HUD program rules and regulations. CONSULTANT must demonstrate knowledge of HOME Investment Partnership Program and Emergency Solutions Grant Programs for the provision of providing rental assistance and eligible services to applicants seeking assistance (referred to as "PROGRAM"). The services are to be administered by the CONSULTANT in accordance with the requirements of U.S. Department of Housing and Urban Development Equal Opportunity and Fair Housing Criteria, 24 CFR 570.904, HOME Investment Partnership Program, 24 CFR Part 92, and Emergency Solutions Grant, 24 CFR Part 576. The PROGRAM will be funded by Emergency Solutions Grant ("ESG") and HOME Investment Partnership Program funds and is required to be operated in compliance with all pertinent federal regulations, including but not limited to 24 CFR Part 570 and OMB Circular A122 and A133.

Specifically the CONSULTANT shall provide the services requested in an efficient, economical, and efficient manner. This RFP describes the services sought by the City including the following areas: case management, rental assistance, housing placement assistance, collaborations and/or linkages with other main stream resources, matching requirements, and assisting clients navigate the application process.

Required Scope of Services

The City is seeking a Consultant who will manage the PROGRAM. The CONSULTANT will enter into a contract with the City for an initial term of approximately eight (8) months from October 16, 2013, through June 30, 2014, with three (3) additional one (1) year options to extend. Those City requirements that must be maintained within the PROGRAM include, but are not limited to the following goals under the City's Rental Assistance Program:

SPECIFICATIONS / SCOPE OF SERVICES

Emergency Solutions Grant and HOME Investment Partnerships Act Program

EMERGENCY SOLUTIONS GRANT

The City of Chula Vista Development Services Housing Division (DSD-HD) is making available Emergency Solutions Grant (ESG) funding for a Chula Vista Rapid Re-Housing Program (CVRRP). ESG funds are earmarked to provide assistance to families and/or individuals who are homeless to move them back into permanent housing as quickly as possible. Resources through this program will be used to rapidly

re-house individuals and families, provide financial resources to pay housing costs, and provide services to help clients find housing and address issues to ensure households remain housed and do not return to homelessness. The ESG program requires a dollar for dollar match. Funding for this CVRRP will be effective October 16, 2013; however, there may be additional funding available to sustain the program by means of contract extensions or amendments for those organizations that achieve or surpass program objectives.

HOME INVESTMENT PARTNERSHIPS ACT PROGRAM

HOME TBRA program may be used to provide second deposits along with rental assistance. The maximum length of assistance for the HOME TBRA program is 24-months. Clients are eligible to receive an initial 12-months of rental assistance with a one-year option year available for those clients meeting the goals of the self-sufficiency housing plan. The HOME program requires a twenty-five (25%) match. The program is subject to future appropriations of HOME funds for the program.

SPECIFICATIONS

The DSD-HD will award funding to organizations that are committed to helping families and/or individuals minimize stays in shelters and transitional housing and instead provide wraparound assistance to house and support them in permanent housing. Funding will be awarded to organizations that currently work with homeless populations and at risk populations and who already have ongoing relationships with clients through street outreach, emergency shelters, and/or transitional housing or special needs programs. The DSD-HD recognizes that once a relationship has been established with homeless or special needs clients, it is important to clients to maintain this continuity through the re-housing and on-going stabilization process. This program also supports organizations to take a "progressive engagement" approach with clients to ensure they get just enough assistance to keep them housed, and, through client assessments, determine the right amount of continued assistance, if needed.

The Consultant will provide resources to assess their clients' housing and financial needs to determine the financial barriers that prevent them from gaining stable housing. There may be many reasons why a client is not housed; however, the goal is to get homeless people into permanent housing as soon as possible, then to work with clients to provide the services they need to maintain that housing and achieve continued housing stability.

Eligible Activities of the CVRRP- EMERGENCY SOLUTIONS GRANT

The DSD-HD will provide ESG funding to support the following activities of the CVRRP: (1) funding for case management, (2) financial assistance to cover deposits, (3) and short and medium-term rental assistance. This program will serve homeless clients qualified by two factors: (1) clients must be homeless as defined in the HUD definition attached to this RFP; (2) clients must define their financial need as part of their initial interview with case management. Providing clients with just the right amount of financial assistance to address their immediate needs to gain and retain stable housing is emphasized. The applicant will design their re-housing program based on the fundable components below combined with their own strategic collaborations for housing and services which they will bring to the table.

The DSD-HD will fund the following CVRRP program components as described below:

Case Management

Funding will support housing case management for clients who are homeless. Families and individuals will be assessed for program eligibility and to determine their financial need for housing assistance. Case managers will follow these clients once they are stably housed and meet with them regularly (at least monthly) while they are receiving CVRRP funding. Case management services include: housing search and placement, housing stability case management, mediation, legal services and credit repair. Case management can be provided to clients who have been meet initial screening criteria.

Housing Stability

The following funding will be available for homeless clients to gain stable housing quickly, and to retain this housing and not return to homelessness.

Pre-housing Financial Assistance will be available to get people past the barrier of entering permanent housing by providing pre-housing costs that includes security and utility deposits.

Rental Assistance

Short term rental assistance can pay up to 3 months' subsidy based on the needs of the clients; medium term rental assistance can pay for additional months based on the needs of the clients and the term of the contract. Rental assistance can be provided once clients are in housing. The aim of the CVRRP is to provide just enough assistance for a limited period of time to get clients into housing and stabilized. Regular meetings with clients will provide case managers with the information they need to determine continued subsidy when necessary. All client various ways: as a flat subsidy, declining subsidy, full subsidy, etc. Clients must have a lease with the landlord (monthly) and payments are made directly to the landlords, unless Project Based Rental Assistance is being provided to the client.

The CVRRP recognizes that not all homeless clients are the same and have various financial and service needs. Keeping this in mind, the CVRRP emphasizes flexibility and cooperatively work together on a plan to get into permanent housing quickly and maintain it with minimum financial assistance. The Consultant will determine the amount and type of assistance for each client with the goal of maintaining stability in permanent housing. Those clients who have built up some savings in a transitional housing program may only need a short term, shallow subsidy, if any; for those clients exiting an emergency shelter or when diverting people from going to a shelter, a deeper rental subsidy may be necessary to keep people in housing.

CVRRP Additional Program Requirements

The following are additional ESG requirements for the CVRRP.

Match

Funding for the CVRRP is Emergency Solutions Grant (ESG) Rapid Re-Housing funding. ESG requires 100% cash or in-kind services match.

HMIS

All organizations must enter data in a local HMIS data base that complies with HUD data standards and be able to report monthly on client APR data elements.

Housing Inspections (24 CFR 576.403):

The CVRRP requires move-in inspections for all clients **before** payments are made to any landlord. Consultant shall perform a habitability inspection using HUD's standard forms. All inspections must include a lead based paint evaluation as part of the inspection.

Rent Reasonable and Fair Market Rent (FMR) Determination

All units subsidized with ESG funds must be determined "rent reasonableness" for the area rents must be within the FMRs. Consultant shall determine rent reasonableness as part of the habitability inspection.

Financial payments

All payments will be paid directly to vendors; clients are not vendors and cannot be reimbursed or paid directly for any costs they may incur. To receive housing assistance, clients must have a legally binding lease with a landlord (can be for 30 days); and organizations must have a written agreement with the landlord for the amount and term of rental assistance to be paid on behalf of the client.

Homeless Participation (24 CFR 576.405):

The applicant must provide for the participation of not less than one homeless individual or formerly homeless individual on the Board of Directors or other equivalent policy-making entity, to the extent that the entity considers and makes policies and decisions regarding any facilities, services or other assistance that receives funding under ESG.

Process for Program Termination (24 CFR 576.402)

If an assisted individual or family receiving assistance violates program requirements, the organization may terminate assistance. The organization is required to terminate assistance in accordance with a formal process that has been established and that recognizes the rights of individuals or families affected. The organization must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so severe cases. Generally, policies should include at least the following elements: A progressive discipline warning system, written notices, a formal appeal process, and consideration of the appeal by someone not involved in the original termination.

Written Standards (24 CFR 576.400(e)(2-3)):

An organization must establish and consistently apply Written Standards for providing housing assistance to eligible clients earning less than 30% of the Area Median Income.

Performance Based Contracts:

The DSD-HD will offer to contract with organizations with the possibility of additional options for an extended term(s) and providing additional funding (if available) based on meeting mutually agreed upon performance measurements.

Funding for the CVRRP

The following total amount of funding will be available for this program is estimated at \$150,000. It is estimated that approximately 15 clients will be served for the contract period; however, applicants can

apply for funding to support a minimum program to house 10 clients. It is our intent to contract with one organization for maximum efficiency and timely expenditure of funds.

Definitions:

Regulations for Emergency Solutions Grant Program (24CFR Parts 91 and 576) are available on HUDHRE website.

Homeless definition: Category 1 (literally homeless) and Category 4 (fleeing domestic violence) only, Under HUD's final definition of homelessness under HEARTH. Homeless Definition attached (Exhibit 1)

Client need determination: The amount and type of financial assistance for clients will be based on the needs of the client as determined by a client budget, and type and cost of housing available to the client. (Pages 75959-75960 of the Emergency Solutions Grant Program guide Vol. 76 No. 233).

Chronic homeless definition: An unaccompanied homeless individual with a disabling condition, or an adult member of a homeless family who has a disabling condition, who has either been continuously homeless for one year or more, or has had at least four episodes of homelessness in the past three years. The term homeless in this case means a person sleeping in a place not meant for human habitation, in an emergency homeless shelter, or in a Safe Haven.

Housing Stability Case Management: At a minimum, case management must include the following: (Page 75979, item 2 of the Emergency Solutions Grant Program guide Vol. 76, No. 233):

Meet with client at least once a month;

- Work with the client to develop a plan to retain permanent housing after assistance ends; the plan must include as a minimum: a budget (income and expenses), public or private assistance the client is likely to receive; takes into account relative housing affordability in Chula Vista.

Progressive Engagement: Engagement and assessment of to provide the minimum financial assistance to a household first; then, if needed, provision of additional resources to ensure housing stability is maintained. This is a fast moving approach, requiring frequent evaluation of a client's situation and needs, plus ability to work closely with landlords.

Unit Inspections:

Habitability Inspection: Defined in the Emergency Solutions Grant: (24 CFR 576.403):

Lead Based Paint Inspection: Inspections must include a Lead Based Paint Evaluation based on HUD's standards. (Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. Please refer to Chapter 7: Lead Based Paint Inspection." U.S. Department of Housing and Urban Development. <http://www.hud.gov/offices/lead/lbp/hudguidelines/Ch07.pdf>).

Rent Reasonable Determination: 24 CFR 982.507 Units must be determined rent reasonable for the area and do not exceed the Fair Market Rent (FMR) or the County of San Diego's Payment Standard.

Please contact Jose Dorado at 619-476-5375 for a copy of the most recent FMRs/Payment Standards.

Chula Vista Tenant Based Rental Assistance Program (CVTBRA)

Up to 12 months of rental assistance subsidy can be provide to eligible clients. A one-time security deposit assistance can also be provided along with rental assistance. Clients must have a lease with the landlord (monthly) and payments are made directly to the landlords.

Unit Inspections: Defined in the HOME Investment Partnerships Act : (24 CFR Part 92):

Lead Based Paint Inspection: Inspections must include a Lead Based Paint

Evaluation based on HUD's standards. (Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. Please refer to Chapter 7: Lead Based Paint Inspection." U.S. Department of Housing and Urban Development.

<http://www.hud.gov/offices/lead/lbp/hudguidelines/Ch07.pdf>).

Written Standards (24 CFR 576.400(e)(2-3)):

An organization must establish and consistently apply Written Standards for providing housing assistance to eligible clients earning less than 60% of the Area Median Income.

Targeted Assistance (24 CFR Part 92.209(c)(2)

Consultant may give preference to special needs populations, including persons with a specific disability, of necessary to address unmet need and stated in the City of Chula Vista's Consolidated Plan. TBRA cannot be conditioned upon participation in medical or disability-related services and preferences cannot be administered in a manner that limits opportunities for persons with disabilities. TBRA assistance may be conditioned on successful participation in a self sufficiency program (24 CFR Part 92.209 (c)(2).

Match

Funding for the CVTBRA program is requires 25% cash or in-kind services match.

Rent Reasonable Determination: Units must be determined rent reasonable for the area and do not exceed the Fair Market Rent (FMR) or the County of San Diego's Payment Standard. Please contact Jose Dorado at 619-476-5375 for a copy of the most recent FMRs/Payment Standards.

IV. Submittal Requirements

Three (3) bound, one unbound, and one pdf (on CD) and Cost Proposal (three copies in a separate sealed envelope) must be received no later than **September 30, 2013 at 3:00 p.m.** at the following address:

Attn: Leilani Hines, Housing Manager
City of Chula Vista
Development Services-Housing Division
Building C

276 Fourth Avenue
Chula Vista, California 91910

Please note that faxed copies will not be accepted. Also note that incomplete proposals, incorrect information, or late submittals may be cause for immediate disqualification. The City reserves the right to amend the RFP prior to the date that proposals are due. Amendments to the RFP shall be mailed to all potential CONSULTANTS. The City reserves the right to extend the date by which the proposals are due.

Late submittals will not be accepted. Furthermore, there will be no public bid opening. Proposals submitted shall become the property of the City and will not be returned.

A complete (but concise) proposal will allow the City to identify the most qualified CONSULTANT. A cover letter should articulate the desire and capability to undertake the project. At a minimum, proposals shall include the following, in order:

1. Cover letter

- Contact information (Mailing address, telephone, facsimile, e-mail address).
- Paragraph regarding exemptions of Government Code Sections 6254 through 6255, as further described below under "Public Disclosure".
- CONSULTANT shall certify that it takes no exceptions to this RFP. If the CONSULTANT does take exception(s) to any portion of the RFP, the specific portion of the RFP to which exception is taken shall be identified and explained.
- CONSULTANT shall confirm in its proposal the receipt of all addenda issued to this RFP. CONSULTANT is not required to include copies of the actual addenda in its proposal.

2. Professional & Educational Background

- Company fact sheet or profile
 - List of organization board members and titles.
 - Minutes of the three most recent Board meetings.
 - Provide an organization chart and short discussion of your management structure, sufficiency of resources, allocation of available resources, and rationale for allocation of available resources.
 - Description and percentage of services to be performed by sub-contractors and/or partners, if any.
- Staff member qualifications (biographies)
 - Description of lead personnel and supporting personnel who will be providing services.
 - Qualifications and experience of personnel, including language capabilities of any staff that will be providing services to the public.
 - Special skills or expertise
 - Demonstrate experience in the specialized field of providing rental assistance.

3. Experience/Technical Competence

- Provide descriptions of at least three (3) projects of similar nature (with emphasis on the last

five years) with references for each project. Provide a contact name, address, phone number, and identify the relationship with your organization. If using the City of Chula Vista, a minimum of three other projects and references must be provided.

- List of current contracts with public agencies for Rental Assistance or related housing services including names of agencies and contact persons.
- Consultant should demonstrate the capacity and capability to fulfill the following professional and administrative requirements:
 - Remain abreast of current HOME and ESG funding requirements
 - Comply with all applicable HUD regulations.
 - Sufficient training/knowledge in calculating rental assistance subsidy payments using 24 CFR Part 5 .
 - Provide service to a multi-ethnic city with a population that includes Non-English speaking members.
 - Receive inquiries from City of Chula Vista residents.

4. Application Work Plan for Activities:

A. Rental Assistance under ESG and HOME Program:

- a) Describe your agency and its involvement in serving homeless populations and special needs populations including the chronically homeless population. Include the type(s) of homeless populations and special needs populations that you serve, whether you operate emergency shelters or transitional housing, outreach to homeless people on the street, service delivery, housing locator services, and how you currently collaborative with outside organization and resources.
- b) Describe your plan for this proposal to rapidly re-house your homeless clients into a permanent, stable housing situation and prevent their return to homelessness. Please include the following:
 - I. Describe the type of population to be served, number of persons and households to be served, where people will be coming from, how you will outreach to them or will they come from your Agency's shelters or transitional housing;
 - II. Describe how you will assess your clients and determine program eligibility;
 - III. Describe your experience with landlords and how you assist clients to locate housing;
 - IV. What case management approaches will you use to increase client housing stability;
 - V. Describe how you can start the program no later than one month after the award of the contract;
 - VI. Describe how you would prepare clients for self sufficiency which may include tapering the subsidy, and collaborating with outside resources.
 - VII. Describe how you will assist clients access main stream resources (health care, food stamps, WIC, etc.)
 - VIII. Describe how you will collaborate with landlords, service providers and mainstream resources so they can be used to help clients get houses, and

maintain housing stability.

5. Cost/Financial Capability (shall be submitted in a separate sealed envelope)

i. Financial references

- Three years of financial statements.
- Consultant must provide a total cost for services, with detailed breakdown and desired method of payment for the initial contract period from October 16, 2013 through June 30, 2014 and each of the subsequent three (3) year options. Include how matching requirement will be met.

Note: the City allocates funding for the Emergency Solutions Grant and HOME Investment Partnership Program in its HUD-approved Annual Action Plan. Proposals should identify a budget for a term beginning October 16, 2013 and ending June 30, 2014. Contract extensions, if granted, will be based on City Council annual allocations. The amount available in future City allocations of ESG and HOME funding is unknown. Future option years will be allocated appropriately. The City shall disburse compensation based upon satisfactory performance and program operation under the terms of the contract.

Note: the City shall not directly reimburse out-of-pocket or per diem expenses incurred by the Consultant in connection with services performed in implementing the Rental Assistance Housing Program. These expenses are considered costs related to program administration, which are incorporated in the Cost/Price Proposal.

V. Proposal Evaluation Criteria: Proposals will be screened and ranked by a selection committee whose composition shall be determined by the City. The selection committee will review the proposals for the most qualified firm and rank each proposal based on the points system below. The scoring points for each of these six items are listed in parentheses based on a total of 100 points:

(1) Responsiveness (10 Points) - Organization, presentation, and content of the submittal.

(2) Experience/Technical Competence (20 Points) - Describe prior experience in the field of managing and implementing a Rental Assistance program, addressing specific experience with homeless and special needs populations.

(3) Professional & Educational Background (20 Points) - Specialized experience and technical competence of the firm(s), (including principal firms, joint venture-partners, and sub-consultants) considering the types of service required; the complexity of the project; record of performance; and the strength of the key personnel who will be dedicated to the project.

(4) Program Strategy and Activities (20 Points) - Describe the proposed strategy and program activities to be implemented to achieve the goals of the Scope of Services in a timely and competent manner.

(5) Collaboration and Leverage (10 Points) - Knowledge and understanding of the local environment and a local presence for interfacing with the City and meeting City requirements. Describe any collaborations within local service provider, as well as federal or local funds leveraged to meet the match requirement for implementing an ESG and HOME TBRA program.

(6) Cost , Matching and Additional Sources (20 Points) - Financial resources and stability of the principle consultant and/or consultant team. Provide a proposed budget for provision of services as outlined in the Scope of Work.

VI. Conceptual Timeline

Release of RFP:	September 16, 2013
Consultant Question Submittals (in writing):	September 25, 2013
City Response to Questions:	September 26, 2013
Submittal deadline:	September 30, 2013 at 3 p.m. PST
Review of proposals:	October 1-7, 2013 (approx.)
City Council meeting	October 15, 2013 (approx.)

VII. Response to Questions

Questions must be submitted in writing to Jose Dorado via email at jdorado@chulavistaca.gov prior to 3 p.m. on September 25, 2013. Responses to questions will be provided by September 26, 2013.

VIII. Contract Terms and Conditions

Issuance of this RFP does not commit City to award a contract, or to pay any costs incurred in the preparation of a response to this request. City retains the right to reject any or all submittals, or portions of submittals. The City further retains the right to waive informalities, technical defects, or minor irregularities in proposals received.

Selection is dependent upon the negotiation of a mutually acceptable contract with the successful CONSULTANT. A sample contract that will be modified to the specific of this project is provided for your review as Attachment A. No modifications to the standard contract language will be granted. Cost to meet the minimum requirements shall be noted as part of the CONSULTANT fee schedule.

The City reserves the right to negotiate material aspects of the RFP including, but not limited to, methodology, proposed staff assignments, timeline, period of coverage, cost, and financial incentives.

Each submittal shall be valid for not less than one hundred and twenty (120) days from the date of receipt.

All insurance shall be provided at the sole cost and expense of the firm or person selected.

IX. Insurance Requirements

Consultant must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the consultant, his agents, representatives, employees or subcontractors and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

A. Minimum Scope of Insurance

Coverage must be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001)
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability or Errors & Omissions Liability insurance appropriate to the consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- | | |
|---|---|
| 1. General Liability: (Including operations, products and completed operations, as applicable.) | \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. |
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and property damage. |
| 3. Workers' Compensation Employer's Liability: | Statutory
\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |
| 4. Professional Liability or Errors & Omissions Liability: | \$1,000,000.00 each occurrence
\$1,000,000 policy aggregate |

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Other Insurance Provisions

The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:

1. The **City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to liability arising out of automobiles** owned, leased, hired or borrowed by or on behalf of the consultant, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of the consultant's including providing materials, parts or equipment furnished in connection with such work or operations. **The general liability additional insured coverage must be provided in the form of an endorsement to the contractor's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products / Completed Operations coverage.**
2. The **consultant's General Liability insurance coverage must be primary insurance as it pertains to the City,** its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of the contractor and in no way relieves the contractor from its responsibility to provide insurance.
3. Each insurance policy required by this clause must be endorsed to state that **coverage will not be canceled by either party, except after thirty (30) days' prior written notice to the City** by certified mail, return receipt requested.
4. **Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured** in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
5. Consultant's insurer will provide a **Waiver of Subrogation** in favor of the City for each required policy providing coverage during the life of this contract.

If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of the contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City for review.

E. Acceptability of Insurers

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.

F. Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

G. Subcontractors

Consultants must include all sub-consultants as insureds under its policies or furnish separate certificates and endorsements for each sub-consultant. All coverage for sub-consultants are subject to all of the requirements included in these specifications.

X. Maintenance of Records and Accounting

The CONSULTANT shall maintain, during the Project implementation time and for a period of five (5) years after completion of the Project, accurate and organized records of all costs of any type and all services performed for the project. City will have the right at any time, including during the performance of all Phases of the Project to audit and copy all such records.

XI. Ownership of Documents

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced for this project shall be the sole and exclusive property of the City. No such materials or properties produced in whole or in part for this project shall be subjected to private use, copyrights or patent rights by CONSULTANT in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced for this project.

XII. Public Disclosure

All proposals submitted in response to this RFP become the property of the City and public records, and as such may be subject to public review. Under the California Public Records Act (California Government Code Section 6250 et seq.) records in the custody of a public entity generally have to be disclosed unless the information being sought falls into one or more of the exemptions to disclosure set out in Government Code Sections 6254 through 6255. The cover letter of the proposal should contain a paragraph that states whether or not the CONSULTANT believes that its proposal does or does not contain information that falls into one of the exemptions of Government Code Sections 6254 through 6255 and whether or not the CONSULTANT considers such information to be confidential.

In the absence of a declaration, City may be obligated to disclose proposal to any party that requests it. Regardless of assertions of confidentiality, proposal contents may still be disclosed if City, or court with jurisdiction, determines that such proposal is a public record requiring disclosure.

Attachments

1. Attachment A – City of Chula Vista Sample Contract
2. General Provisions

PROPOSAL & OFFER TO CONTRACT

The respondent, herein sometimes called consultant, contractor, vendor, or supplier submits a proposal and offers to enter into a contract with the City of Chula Vista, herein called City, this **30th DAY OF SEPTEMBER , 2013** as follows:

This Proposal & Offer to Contract, subject to the specifications, terms and conditions, and General Provisions herein, when duly accepted by the City shall constitute a contract between the parties.

In consideration of the payments to be provided by the City, and in accordance with the conditions expressed in the proposal forms and specifications attached, and by this reference incorporated herein, Consultant agrees to the Provision of Fair Housing Services and Tenant-Landlord Disputes for the City of Chula Vista.

Company Name:					
Address:					
City:		State:		Zip:	
Telephone:		Fax:			
Company Website:					
Contact Person:		Title:			
Signature:		Date:			

ATTACHMENT "A"
SAMPLE CONTRACT

City of Chula Vista
and
[INSERT NAME OF CONSULTANT],
To [INSERT SERVICES TO BE PROVIDED]

This agreement (Agreement), effective **[FILL-IN EFFECTIVE DATE]**, is between the City-related entity whose name and business form is indicated on Exhibit A, Paragraph 2, (City), and the entity whose name, business form, place of business and telephone numbers are indicated on Exhibit A, Paragraphs 4 through 6, (Consultant), and is made with reference to the following facts:

RECITALS

WHEREAS, **[INSERT RECITALS; INCLUDE AS MANY AS NEEDED¹]**; and

WHEREAS, **[INCLUDE RECITAL DEFINING THE "PROJECT"²]**; and

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

[End of Recitals. Next Page Starts Obligatory Provisions.]

-
1. Insert the relevant factual background and necessary findings supporting hiring the Consultant. Also use the Recitals to define terms or concepts to shorten references to them later in the Agreement. For example, if property is involved in the agreement, a typical "Whereas" clause may be:

'Whereas, the property which is the subject matter of this Agreement is commonly known as _____, and is legally described in attached Exhibit _____ ("Property"); and'

2. Include a description of the "Project," a defined term in the Agreement. For example:

'Whereas, this Agreement involves work to be performed in connection with the Eastern Urban Center project (the "Project");'

OBLIGATORY PROVISIONS PAGES

NOW, THEREFORE, for valuable consideration the City and Consultant do hereby mutually agree as follows:

All of the Recitals above are incorporated into this Agreement by this reference.

ARTICLE I. CONSULTANT'S OBLIGATIONS**A. General**

1. General Duties. *Consultant shall perform all of the services described on Exhibit A, Paragraph 7 (General Duties).*
2. Scope of Work and Schedule. *In performing and delivering the General Duties, Consultant shall also perform the services, and deliver to City the "Deliverables" described in Exhibit A, Paragraph 8, entitled "Scope of Work and Schedule," according to, and within the time frames set forth in Exhibit A, Paragraph 8, time being of the essence of this agreement. The General Duties and the work and Deliverables required in the Scope of Work and Schedule shall be referred to as the "Defined Services." Failure to complete the Defined Services by the times indicated does not, except at the option of the City, terminate this Agreement.*
 - a. Reductions in Scope of Work. *City may independently, or upon request from Consultant, from time to time, reduce the Defined Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.*
 - b. Additional Services. *In addition to performing the Defined Services, City may require Consultant to perform additional consulting services related to the Defined Services (Additional Services), and upon doing so in writing, if they are within the scope of services offered by Consultant, Consultant shall perform same on a time and materials basis at the rates set forth in the "Rate Schedule" in Exhibit A, Paragraph 10(C), unless a separate fixed fee is otherwise agreed upon. All compensation for Additional Services shall be paid monthly as billed.*
3. Standard of Care. *The Consultant expressly warrants that the work to be performed pursuant to this Agreement, whether Defined Services or Additional Services, shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.*

- a. *No Waiver of Standard of Care.* Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

B. *Application of Laws.* *Should a federal or state law pre-empt a local law, or regulation, the Consultant must comply with the federal or state law and implementing regulations. No provision of this Agreement requires the Consultant to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of this Agreement violates or would require the Consultant to violate any law, the Consultant agrees to notify City immediately in writing. Should this occur, the City and the Consultant agree that they will make appropriate arrangements to proceed with or, if necessary, amend or terminate this Agreement, or portions of it, expeditiously.*

1. *Subcontractors. Consultant agrees to take appropriate measures necessary to ensure that all participants utilized by the Consultant to complete its obligations under this Agreement, such as subcontractors, comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local, affecting Project implementation. In addition, if a subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, the Consultant shall ensure that the subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.*

C. Insurance

1. *General. Consultant must procure and maintain, during the period of performance of this Agreement, and for twelve months after completion, policies of insurance from insurance companies to protect against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under this Agreement and the results of that work by the Consultant, his agents, representatives, employees or subcontractors, and provide documentation of same prior to commencement of work.*
2. *Minimum Scope of Insurance. Coverage must be at least as broad as:*
 - a. *CGL. Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).*
 - b. *Auto. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).*

c. *WC*. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

d. *E&O*. Professional Liability or Errors & Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

3. Minimum Limits of Insurance. Consultant must maintain limits no less than those included in the table below:

i. General Liability: (Including operations, products and completed operations, as applicable)	\$1,000,000 per occurrence for bodily injury, personal injury, (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Project/location or the general aggregate limit must be twice the required occurrence limit.
ii. Automobile Liability:	\$1,000,000 per accident for bodily injury, including death, and property damage.
iii. Workers' Compensation Employer's Liability:	Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee
iv. Professional Liability or Errors & Omissions Liability:	\$1,000,000 each occurrence

4. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
5. Other Insurance Provisions. *The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:*

- a. *Additional Insureds. City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to all policies of insurance, including those with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including providing materials, parts or equipment furnished in connection with such work or operations. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products/Completed Operations coverage.*
 - b. *Primary Insurance. The Consultant's General Liability insurance coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of the Consultant and in no way relieves the Consultant from its responsibility to provide insurance.*
 - c. *Cancellation. The insurance policies required by this Agreement shall not be canceled by either party, except after thirty days' prior written notice to the City by certified mail, return receipt requested. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.*
 - d. *Active Negligence. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insureds in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.*
 - e. *Waiver of Subrogation. Consultant's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage for the term required by this Agreement.*
6. *Claims Forms. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are written on a claims-made form:*
 - a. *Retro Date. The "Retro Date" must be shown, and must be before the date of the Agreement or the beginning of the work required by the Agreement.*

- b. *Maintenance and Evidence. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work required by the Agreement.*
 - c. *Cancellation. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, the Consultant must purchase "extended reporting" coverage for a minimum of five years after completion of the work required by the Agreement.*
 - d. *Copies. A copy of the claims reporting requirements must be submitted to the City for review.*
7. Acceptability of Insurers. Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.
8. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by Section I.C. of this Agreement. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the requirements of this Agreement. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.
9. Subcontractors. Consultant must include all subconsultants as insureds under its policies or furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants is subject to all of the requirements included in these specifications.
10. Not a Limitation of Other Obligations. Insurance provisions under this Article shall not be construed to limit the Consultant's obligations under this Agreement, including Indemnity.

D. Security for Performance

1. Performance Bond. *In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Performance Bond (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled "Performance*

Bond”), then Consultant shall provide to the City a performance bond, in the amount indicated at Exhibit A, Paragraph 18, in the form prescribed by the City and by such sureties which are authorized to transact such business in the State of California, listed as approved by the United States Department of Treasury Circular 570, <http://www.fms.treas.gov/c570>, and whose underwriting limitation is sufficient to issue bonds in the amount required by the Agreement, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulations. All bonds signed by an agent must be accompanied by a certified copy of such agent’s authority to act. Surety companies must be duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits so required. Form must be satisfactory to the Risk Manager or City.

2. *Letter of Credit. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled “Letter of Credit”), then Consultant shall provide to the City an irrevocable letter of credit callable by the City at its unfettered discretion by submitting to the bank a letter, signed by the City Manager, stating that the Consultant is in breach of the terms of this Agreement. The letter of credit shall be issued by a bank, and be in a form and amount satisfactory to the Risk Manager or City Attorney which amount is indicated in the space adjacent to the term, “Letter of Credit,” in Exhibit A, Paragraph 18.*
3. *Other Security. In the event that Exhibit A, at Paragraph 18, indicates the need for Consultant to provide security other than a Performance Bond or a Letter of Credit (indicated by a check mark in the parenthetical space immediately preceding the subparagraph entitled “Other Security”), then Consultant shall provide to the City such other security therein listed in a form and amount satisfactory to the Risk Manager or City Attorney.*

E. Business License. Consultant agrees to obtain a business license from the City and to otherwise comply with Title 5 of the Chula Vista Municipal Code.

ARTICLE II. CITY OBLIGATIONS

- A. Consultation and Cooperation.** City shall regularly consult the Consultant for the purpose of reviewing the progress of the Defined Services and Schedule, and to provide direction and guidance to achieve the objectives of this Agreement. The City shall allow Consultant access to its office facilities, files and records, as deemed necessary and appropriate by the City, throughout the term of this Agreement. In addition, City agrees to provide the materials identified at Exhibit A, Paragraph 9, with the understanding that delay in the provision of those materials beyond thirty days after authorization to proceed, shall constitute a basis for

the justifiable delay in the Consultant's performance.

B. Compensation.

1. Following Receipt of Billing. Upon receipt of a properly prepared bill from Consultant, submitted to the City as indicated in Exhibit A, Paragraph 17, but in no event more frequently than monthly, on the day of the period indicated in Exhibit A, Paragraph 17, City shall compensate Consultant for all services rendered by Consultant according to the terms and conditions set forth in Exhibit A, Paragraph 10, adjacent to the governing compensation relationship indicated by a "checkmark" next to the appropriate arrangement, subject to the requirements for retention set forth in Paragraph 18 of Exhibit A, and shall compensate Consultant for out of pocket expenses as provided in Exhibit A, Paragraph 11.
2. Supporting Information. Any billing submitted by Consultant shall contain sufficient information as to the propriety of the billing, including properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature of the charges to the Project in order to permit the City to evaluate that the amount due and payable is proper, and such billing shall specifically contain the City's account number indicated on Exhibit A, Paragraph 17(C) to be charged upon making such payment.
3. Exclusions. In determining the amount of the compensation City will exclude any cost:
 - 1) incurred prior to the effective date of this Agreement; or 2) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of the Consultant, its agents, employees, or subcontractors.
 - a. Errors and Omissions. In the event that the City Administrator determines that the Consultant's negligence, errors, or omissions in the performance of work under this Agreement has resulted in expense to City greater than would have resulted if there were no such negligence, errors, omissions, Consultant shall reimburse City for any additional expenses incurred by the City. Nothing in this paragraph is intended to limit City's rights under other provisions of this Agreement.
4. Payment Not Final Approval. The Consultant understands and agrees that payment to the Consultant for any Project cost does not constitute a City final decision about whether that cost is allowable and eligible for payment under the Project and does not constitute a waiver of any violation of Consultant of the terms of the Agreement. The Consultant

acknowledges that City will not make a final determination about the eligibility of any cost until the final payment has been made on the Project or the results of an audit of the Project requested by the City has been completed, whichever occurs latest. If City determines that the Consultant is not entitled to receive any portion of the compensation due or paid, City will notify the Consultant in writing, stating its reasons. The Consultant agrees that Project closeout will not alter the Consultant's responsibility to return any funds due City as a result of later refunds, corrections, or other similar transactions; nor will Project closeout alter the right of City to disallow costs and recover funds provided for the Project on the basis of a later audit or other review.

- a. *Consultant's Obligation to Pay.* Upon notification to the Consultant that specific amounts are owed to City, whether for excess payments or disallowed costs, the Consultant agrees to remit to City promptly the amounts owed, including applicable interest.

ARTICLE III. ETHICS

A. Financial Interests of Consultant

1. Consultant is Designated as an FPPC Filer. If Consultant is designated on Exhibit A, Paragraph 14, as an "FPPC filer," Consultant is deemed to be a "Consultant" for the purposes of the Political Reform Act conflict of interest and disclosure provisions, and shall report economic interests to the City Clerk on the required Statement of Economic Interests in such reporting categories as are specified in Paragraph 14 of Exhibit A, or if none are specified, then as determined by the City Attorney.
2. No Participation in Decision. Regardless of whether Consultant is designated as an FPPC Filer, Consultant shall not make, or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement.
3. Search to Determine Economic Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant warrants and represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as the term is used in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic interest which would conflict with Consultant's duties under this Agreement.
4. Promise Not to Acquire Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant

will not acquire, obtain, or assume an economic interest during the term of this Agreement which would constitute a conflict of interest as prohibited by the Fair Political Practices Act.

5. Duty to Advise of Conflicting Interests. Regardless of whether Consultant is designated as an FPPC Filer, Consultant further warrants and represents that Consultant will immediately advise the City Attorney if Consultant learns of an economic interest of Consultant's that may result in a conflict of interest for the purpose of the Fair Political Practices Act, and regulations promulgated thereunder.
6. Specific Warranties Against Economic Interests. Consultant warrants, represents and agrees that:
 - a. Neither Consultant, nor Consultant's immediate family members, nor Consultant's employees or agents (Consultant Associates) presently have any interest, directly or indirectly, whatsoever in any property which may be the subject matter of the Defined Services, or in any property within 2 radial miles from the exterior boundaries of any property which may be the subject matter of the Defined Services, (Prohibited Interest), other than as listed in Exhibit A, Paragraph 14.
 - b. No promise of future employment, remuneration, consideration, gratuity or other reward or gain has been made to Consultant or Consultant Associates in connection with Consultant's performance of this Agreement. Consultant promises to advise City of any such promise that may be made during the Term of this Agreement, or for twelve months thereafter.
 - c. Consultant Associates shall not acquire any such Prohibited Interest within the Term of this Agreement, or for twelve months after the expiration of this Agreement, except with the written permission of City.
 - d. Consultant may not conduct or solicit any business for any party to this Agreement, or for any third party that may be in conflict with Consultant's responsibilities under this Agreement, except with the written permission of City.

IV. LIQUIDATED DAMAGES

A. ***Application of Section.*** *The provisions of this section apply if a Liquidated Damages Rate is provided in Exhibit A, Paragraph 13.*

1. *Estimating Damages.* *It is acknowledged by both parties that time is of the essence in the completion of this Agreement. It is difficult to estimate the amount of damages resulting*

from delay in performance. The parties have used their judgment to arrive at a reasonable amount to compensate for delay.

2. *Amount of Penalty.* *Failure to complete the Defined Services within the allotted time period specified in this Agreement shall result in the following penalty: For each consecutive calendar day in excess of the time specified for the completion of the respective work assignment or Deliverable, the Consultant shall pay to the City, or have withheld from monies due, the sum of Liquidated Damages Rate provided in Exhibit A, Paragraph 13 (Liquidated Damages Rate).*
3. *Request for Extension of Time.* *If the performance of any act required of Consultant is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Consultant, as determined by the City, Consultant shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event Consultant claims the existence of such a delay, the Consultant shall notify the City's Contract Administrator, or designee, in writing of that fact within ten calendar days after the beginning of any such claimed delay. Extensions of time will not be granted for delays to minor portions of work unless it can be shown that such delays did or will delay the progress of the work.*

ARTICLE V. INDEMNIFICATION

A. Defense, Indemnity, and Hold Harmless.

1. *General Requirement.* Except for liability for Design Professional Services covered under Article V., Section A.2., Consultant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Defined Services or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence, active negligence or willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

2. Design Professional Services. If Consultant provides design professional services, as defined by California Civil Code section 2782.5, as may be amended from time to time, Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of Consultant's services. Consultant's duty to defend, indemnify, and hold harmless shall not include any claims or liabilities arising from the sole negligence, active negligence or willful misconduct of the City, its agents, officers or employees. This section in no way alters, affects or modifies the Consultant's obligations and duties under this Agreement.
3. Costs of Defense and Award. Included in the obligations in Sections A.1 and A.2, above, is the Consultant's obligation to defend, at Consultant's own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in Sections A.1. and A.2. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all related legal expenses and costs incurred by each of them, subject to the limitations in Sections A.1. and A.2.
4. Insurance Proceeds. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.
5. Declarations. Consultant's obligations under Article V shall not be limited by any prior or subsequent declaration by the Consultant.
6. Enforcement Costs. Consultant agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article V.
7. Survival. Consultant's obligations under Article V shall survive the termination of this Agreement.

ARTICLE VI. TERMINATION OF AGREEMENT

- A. ***Termination for Cause.*** *If, through any cause, Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this Agreement, or if Consultant shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right*

to terminate this Agreement by giving written notice to Consultant of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by Consultant shall, at the option of the City, become the property of the City, and Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement and less any damages caused City by Consultant's breach, for any work satisfactorily completed on such documents and other materials up to the effective date of Notice of Termination.

- B. Termination of Agreement for Convenience of City.** City may terminate this Agreement at any time and for any reason, by giving specific written notice to Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished and unfinished documents and other materials described hereinabove shall, at the option of the City, become City's sole and exclusive property. If the Agreement is terminated by City as provided in this paragraph, Consultant shall be entitled to receive just and equitable compensation, in an amount not to exceed that payable under this Agreement, for any satisfactory work completed on such documents and other materials to the effective date of such termination. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this section.

ARTICLE VII. RECORD RETENTION AND ACCESS

- A. Record Retention.** During the course of the Project and for three (3) years following completion, the Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the Project as City may require.
- B. Access to Records of Consultant and Subcontractors.** The Consultant agrees to permit, and require its subcontractors to permit City or its authorized representatives, upon request, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project.
- C. Project Closeout.** The Consultant agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.

ARTICLE VIII. PROJECT COMPLETION, AUDIT, AND CLOSEOUT

- A. Project Completion.** Within ninety (90) calendar days following Project completion or termination by City, Consultant agrees to submit a final certification of Project expenses and audit reports, as applicable.

- B. **Audit of Consultants.** Consultant agrees to perform financial and compliance audits the City may require. The Consultant also agrees to obtain any other audits required by City. Consultant agrees that Project closeout will not alter Consultant's audit responsibilities. Audit costs are allowable Project costs.
- C. **Project Closeout.** Project closeout occurs when City notifies the Consultant that City has closed the Project, and either forwards the final payment or acknowledges that the Consultant has remitted the proper refund. The Consultant agrees that Project closeout by City does not invalidate any continuing requirements imposed by the Agreement or any unmet requirements set forth in a written notification from City

ARTICLE IX. MISCELLANEOUS PROVISIONS

- A. **Assignability.** The services of Consultant are personal to the City, and Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of City.
1. *Limited Consent.* City hereby consents to the assignment of the portions of the Defined Services identified in Exhibit A, Paragraph 16 to the subconsultants identified as "Permitted Subconsultants."
- B. **Ownership, Publication, Reproduction and Use of Material.** All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced under this Agreement shall be the sole and exclusive property of City. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express written consent of City. City shall have unrestricted authority to publish, disclose (except as may be limited by the provisions of the Public Records Act), distribute, and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- C. **Independent Contractor.** City is interested only in the results obtained and Consultant shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. City maintains the right only to reject or accept Consultant's work products. Consultant and any of the Consultant's agents, employees or representatives are, for all purposes under this Agreement, independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave

benefits. Therefore, City will not withhold state or federal income tax, social security tax or any other payroll tax, and Consultant shall be solely responsible for the payment of same and shall hold the City harmless with regard to them.

1. Actions on Behalf of City. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever, as an agent or otherwise. Consultant shall have no authority, express or implied, to bind City or its members, agents, or employees, to any obligation whatsoever, unless expressly provided in this Agreement.
2. No Obligations to Third Parties. In connection with the Project, Consultant agrees and shall require that its agents, employees, subcontractors agree that City shall not be responsible for any obligations or liabilities to any third party, including its agents, employees, subcontractors, or other person or entity that is not a party to this Agreement. Notwithstanding that City may have concurred in or approved any solicitation, subagreement, or third party contract at any tier, City shall have no obligation or liability to any person or entity not a party to this Agreement.

- D. **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- E. **Administration of Contract.** Each party designates the individuals (Contract Administrators) indicated on Exhibit A, Paragraph 12, as that party's contract administrator who is authorized by the party to represent it in the routine administration of this Agreement.
- F. **Term.** This Agreement shall terminate when the parties have complied with all executory provisions hereof.
- G. **Attorney's Fees.** Should a dispute arising out of this Agreement result in litigation, it is agreed that the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.
- H. **Statement of Costs.** In the event that Consultant prepares a report or document, or participates in the preparation of a report or document in performing the Defined Services,

Consultant shall include, or cause the inclusion of, in the report or document, a statement of the numbers and cost in dollar amounts of all contracts and subcontracts relating to the preparation of the report or document.

- I. **Consultant is Real Estate Broker and/or Salesman.** If the box on Exhibit A, Paragraph 15 is marked, the Consultant and/or its principals is/are licensed with the State of California or some other state as a real estate broker or salesperson. Otherwise, Consultant represents that neither Consultant, nor its principals are licensed real estate brokers or salespersons.
- J. **Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement as the places of business for each of the designated parties.
- K. **Integration.** This Agreement, together with any other written document referred to or contemplated in it, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision of it may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
- L. **Capacity of Parties.** Each signatory and party to this Agreement warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this Agreement.
- M. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista.

(End of page. Next page is signature page.)

Signature Page
to
Agreement between
City of Chula Vista and
[INSERT NAME OF CONSULTANT],
To [INSERT SERVICES TO BE PROVIDED]

IN WITNESS WHEREOF, City and Consultant have executed this Agreement, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

City of Chula Vista

By: _____
[INSERT NAME OF SIGNATORY,
e.g., Mayor, Sr. Procurement Specialist,
City Manager]

Attest:

Donna Norris, City Clerk

Approved as to form:

Glen R. Googins, City Attorney

[INSERT NAME OF CONSULTANT],

By: _____
[INSERT SIGNATORY NAME]
[INSERT SIGNATORY TITLE]

Exhibit List to Agreement: Exhibit A
[LIST ADDITIONAL EXHIBITS, AS NECESSARY]

Exhibit A
to
Agreement between
City of Chula Vista
and
[INSERT NAME OF CONSULTANT]

1. Effective Date: The Agreement shall take effect upon full execution of the Agreement, as of the effective date stated on page 1 of the Agreement.

2. City-Related Entity: **[CHECK ONE]**

() City of Chula Vista, a municipal chartered corporation of the State of California

() The Chula Vista Public Financing Authority, a

() The Chula Vista Industrial Development Authority, a

() Other: _____, a [insert business form]

(City)

3. Place of Business for City:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

4. Consultant:

[INSERT CONSULTANT'S NAME]

5. Business Form of Consultant:

() Sole Proprietorship

- ☐ Partnership
- ☐ Corporation

6. Place of Business, Telephone and Fax Number of Consultant:

[INSERT CONSULTANT'S ADDRESS AND PHONE AND FAX NOS.]

7. General Duties:

[INSERT GENERAL DESCRIPTION OF WORK TO BE PERFORMED BY CONSULTANT.]

8. Scope of Work and Schedule:

A. Detailed Scope of Work:

[INSERT DETAILED DESCRIPTION OF WORK TO BE PERFORMED BY CONSULTANT.]

B. Date for Commencement of Consultant Services:

☐ Same as Effective Date of Agreement

☐ Other: _____

C. Dates or Time Limits for Delivery of Deliverables:

Deliverable No. 1: _____.

Deliverable No. 2: _____.

Deliverable No. 3: _____.

D. Date for completion of all Consultant services: _____.

9. *Materials Required to be Supplied by City to Consultant:*

10. Compensation:

A. ☐ Single Fixed Fee Arrangement.

For performance of all of the Defined Services by Consultant as herein required, City shall pay a single fixed fee in the amounts and at the times or milestones or for the Deliverables set forth below:

Single Fixed Fee Amount: _____, payable as follows:

Milestone or Event or DeliverableAmount or Percent of Fixed Fee

- () 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 19 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

B. () Phased Fixed Fee Arrangement.

For the performance of each phase or portion of the Defined Services by Consultant as are separately identified below, City shall pay the fixed fee associated with each phase of Services, in the amounts and at the times or milestones or Deliverables set forth. Consultant shall not commence Services under any Phase, and shall not be entitled to the compensation for a Phase, unless City shall have issued a notice to proceed to Consultant as to said Phase.

Phase	Fee for Said Phase
1.	\$ _____
2.	\$ _____
3.	\$ _____

- () 1. Interim Monthly Advances. The City shall make interim monthly advances against the compensation due for each phase on a percentage of completion basis for each given phase such that, at the end of each phase only the compensation for that phase has been paid. Any payments made hereunder shall be considered as interest

free loans that must be returned to the City if the Phase is not satisfactorily completed. If the Phase is satisfactorily completed, the City shall receive credit against the compensation due for that phase. The retention amount or percentage set forth in Paragraph 18 is to be applied to each interim payment such that, at the end of the phase, the full retention has been held back from the compensation due for that phase. Percentage of completion of a phase shall be assessed in the sole and unfettered discretion by the Contracts Administrator designated herein by the City, or such other person as the City Manager shall designate, but only upon such proof demanded by the City that has been provided, but in no event shall such interim advance payment be made unless the Consultant shall have represented in writing that said percentage of completion of the phase has been performed by the Consultant. The practice of making interim monthly advances shall not convert this agreement to a time and materials basis of payment.

C. ☐ Hourly Rate Arrangement

(1) ☐ Not-to-Exceed Limitation on Time and Materials Arrangement

Notwithstanding the expenditure by Consultant of time and materials in excess of said Maximum Compensation amount, Consultant agrees that Consultant will perform all of the Defined Services herein required of Consultant for \$_____, including all Materials, and other "reimbursables" (Maximum Compensation).

(2) ☐ Limitation without Further Authorization on Time and Materials Arrangement

At such time as Consultant shall have incurred time and materials equal to \$_____ (Authorization Limit), Consultant shall not be entitled to any additional compensation without further authorization issued in writing and approved by the City. Nothing herein shall preclude Consultant from providing additional Services at Consultant's own cost and expense. See Exhibit B for wage rates.

☐ Hourly rates may increase by 6% for services rendered after [month], 20____, if delay in providing services is caused by City.

11. Materials Reimbursement Arrangement

For the cost of out of pocket expenses incurred by Consultant in the performance of services herein required, City shall pay Consultant at the rates or amounts set forth below:

☐ *None, the compensation includes all costs.*

Cost
or
Rate

- () Reports, not to exceed \$_____: \$_____
- () Copies, not to exceed \$_____: \$_____
- () Travel, not to exceed \$_____: \$_____
- () Printing, not to exceed \$_____: \$_____
- () Postage, not to exceed \$_____: \$_____
- () Delivery, not to exceed \$_____: \$_____
- () Outside Services: \$_____
- () Other Actual Identifiable Direct Costs: \$_____
- _____, not to exceed \$_____: \$_____
- _____, not to exceed \$_____: \$_____

12. Contract Administrators:

City:

Consultant:

13. Liquidated Damages Rate:

- () \$_____ per day.
- () Other: _____

14. Statement of Economic Interests, Consultant Reporting Categories, per Conflict of Interest Code (Chula Vista Municipal Code chapter 2.02):

- () Not Applicable. Not an FPPC Filer.
- () FPPC Filer
- () Category No. 1. Investments, sources of income and business interests.
- () Category No. 2. Interests in real property.
- () Category No. 3. Investments, business positions, interests in real property, and

sources of income subject to the regulatory, permit or licensing authority of the department administering this Agreement.

() Category No. 4. Investments and business positions in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property.

() Category No. 5. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the City of Chula Vista or the City's Redevelopment Agency to provide services, supplies, materials, machinery or equipment.

() Category No. 6. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the department administering this Agreement to provide services, supplies, materials, machinery or equipment.

() List Consultant Associates interests in real property within 2 radial miles of Project Property, if any:

15. () *Consultant is Real Estate Broker and/or Salesman*

16. *Permitted Subconsultants:*

17. Bill Processing:

A. Consultant's Billing to be submitted for the following period of time:

() Monthly

() Quarterly

() Other: _____

B. Day of the Period for submission of Consultant's Billing:

- ☐ First of the Month
- ☐ 15th Day of each Month
- ☐ End of the Month
- ☐ Other: _____

C. City's Account Number: **[TO BE ASSIGNED]**

18. Security for Performance

- ☐ Performance Bond, \$ _____
- ☐ Letter of Credit, \$ _____
- ☐ Other Security:
Type: _____
Amount: \$ _____
- ☐ Retention. If this space is checked, then notwithstanding other provisions to the contrary requiring the payment of compensation to the Consultant sooner, the City shall be entitled to retain, at their option, either the following "Retention Percentage" or "Retention Amount" until the City determines that the Retention Release Event, listed below, has occurred:
 - ☐ Retention Percentage: _____
 - ☐ Retention Amount: \$ _____

Retention Release Event:

- ☐ Completion of All Consultant Services
- ☐ Other: _____
- ☐ Other: The Retention Amount may be released on a monthly basis provided that Consultant has performed said monthly services to the sole satisfaction of the Assistant City Manager/Director of Development Services or his designee.

GENERAL PROVISIONS

Please Read Carefully

These Provisions Are a Part of Your Bid and any Contract Awarded

The bidder agrees that:

- A. Bidder has carefully examined the specifications, and all provisions relating to the item(s) to be furnished or the work to be done; understands the meaning, intent, and requirements; and
- B. Bidder will enter into a written contract and furnish the item(s) or complete the work in the time specified, and in strict conformity with the City of Chula Vista specifications for the prices quoted.

Note: Bidder is defined as any individual, partnership, or corporation submitting a bid, proposal, or quotation in response to a request for bid, request for proposal, or request for quotation. A bidder may also be referred to as consultant, contractor, supplier, or vendor.

1. Prices

All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or written with ink adjacent to the error; the person signing the bid must initial corrections in ink.

Bids shall indicate the unit price extended to indicate the total price for each item bid. Any difference between the unit price correctly extended and the total price shown for all items bid shall be resolved in favor of the unit prices, except when the bidder clearly indicates that the total price for all items bid is based on consideration of being awarded the entire lot and that an adjustment of the total price is being made in consideration of receiving the entire bid.

2. Bidder's Security

A bid deposit in an amount equal to at least 10% of the bid may be required as a bid security by the City. The bid security may only be in cash, a cashier's check, a certified check made payable to the City of Chula Vista, or a bidder's bond. If the bid security is a bond, it shall be executed by a surety insurer authorized to issue surety bonds in the State of California. The bid security must be executed by the bidder and enclosed with the bid proposal in the sealed bid envelope.

3. Items Offered

If the item offered has a trade name, brand and/or catalog number, such shall be stated in the bid. If the bidder proposes to furnish an item of a manufacturer or vendor other than that mentioned on the face hereof, bidder must specify maker, brand, quality, catalog number, or other trade designation. Unless such is noted on the bid form, it will be deemed that the item offered is that designated even though the bid may state or equal.

4. Brand Names

Whenever reference to a specific brand name is made, it is intended to describe a component that has been determined to best meet operational, performance, or reliability standards of the City, hereby incorporating these standards by reference within the specifications. An equivalent (or equal) may be offered by the bidder, subject to evaluation and acceptance by the City. It is the bidder's responsibility to provide, at bidder's expense, samples, test data, or other documentation the City may require to fully evaluate and determine acceptability of an offered substitute. The City reserves the sole right to reject a substituted component that will not meet or exceed City standards.

5. Samples

Samples may be required for bid evaluation and testing purposes. Bidders shall agree to provide samples within forty-eight (48) hours upon request and at no additional cost to the City

6. Verify Quotations

Prices shall be verified prior to bid submittal, as withdrawal or correction may not be permitted after the bid has been opened.

7. Firm Prices

Prices on bid shall be firm prices not subject to escalation. In the event the specifications provide for escalation, the maximum limit shall be shown, or the bid shall not be considered. In the event of a decline in market price below a price bid, the City of Chula Vista shall receive the benefit of such decline.

8. Modification or Withdrawal of Bids

Bids may be modified or withdrawn by written or facsimile notice received prior to the exact hour and date specified for receipt of bid. A bid may also be withdrawn in person by a bidder, or authorized representative, prior to the exact hour and date set for receipt of bids. Telephone withdrawals are not permitted.

9. Late Bids, Modifications, or Withdrawals

(a) Bids, modifications of bids, or bid withdrawals received after the exact time and date specified for receipt will not be considered unless receipt is before the contract is awarded and the City determines that late receipt was due solely to City error.

(b) Modification of a successful bid that makes the terms of the bid more favorable to the City will be considered at any time.

10. Mistake in Bid

(a) If the bidder discovers a mistake in bid prior to the hour and date specified for receipt of bid, bidder may correct the mistake by modifying or withdrawing the bid in accordance with Items 8 and 9 above.

(b) If within seventy-two hours of the bid closing and prior to the issuance of a purchase order or a contract, the apparent low and best bidder discovers a mistake in bid of a serious and significant nature which is unfavorable to bidder, bidder may request consideration be given to modifying the bid if it remains the lowest bid or to withdrawal of the bid if the result of the correction of the mistake makes another bidder lowest and best bidder. The mistake must be evident and provable. The right is reserved by the City to reject any and all requests for correction of mistakes in bids received after the hour and date of the bid closing. The decision of the Purchasing Agent is final as regards acceptance or rejection of requests for correction of bids.

(c) A mistake in bid cannot be considered once a purchase order or contract is issued.

11. Signature

All bids shall be signed and the title and firm name indicated. A bid by a corporation shall be signed by an authorized officer, employee or agent with his or her title.

12. No Bids

If no bid is to be submitted, the bid should be marked No Bid and returned to maintain the bidder's name in the vendor file for future solicitations. A letter or postcard may be submitted. If a bidder fails to respond to a reasonable number of bids without returning a No Bid, the Purchasing Agent reserves the right to delete the bidder from the vendor file for future solicitations.

13. Alternative Proposals

To be responsive to the bid, bidder must submit a proposal that meets all specific bid requirements. Once bidder has proposed a product which is responsive to the specification, bidder may include with the bid any additional proposals or alternative products that bidder believes can meet or exceed the City's requirements and that may offer additional advantages, benefits, or cost savings. The City reserves the right to evaluate, and accept or reject, such alternatives as though they were part of the original specifications without advertising for further bids, when in the best interests of the City. Any awards so made will be based on operational and cost analysis considerations that would result in the optimum economic advantage to the City.

14. Confidential Information

Any information deemed confidential or proprietary should be clearly identified by the bidder as such. It may then be protected and treated with confidentiality only to the extent permitted by state law. Otherwise the information shall be considered a public record. Information or data submitted with a bid will not be returned.

15. Quality

Unless otherwise required in the specifications, all goods furnished shall be new and unused.

16. Litigation Warranty

The bidder, by bidding, warrants that bidder is not currently involved in litigation or arbitration concerning the materials or bidder's performance concerning the same or similar material or service to be supplied pursuant to this contract of specification, and that no judgments or awards have been made against bidder on the basis of bidder's performance in supplying or installing the same or similar material or service, unless such fact is disclosed to the City in the bid. Disclosure may not disqualify the bidder. The City reserves the right to evaluate bids on the basis of the facts surrounding such litigation or arbitration and to require bidder to furnish the City with a surety bond executed by a surety company authorized to do business in the State of California and approved by The City of Chula Vista in a sum equal to one hundred percent (100%) of the contract price conditional on the faithful performance by bidder of the contract in the event the bid is awarded to bidder, notwithstanding the litigation or arbitration.

17. Royalties, Licenses and Patents

Unless otherwise specified, the bidder shall pay all royalties, license and patent fees. The bidder warrants that the materials to be supplied do not infringe any patent, trademark or copyright and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City from all loss or damages, whether general, exemplary or punitive, as a result of any actual or claimed infringement asserted against the City, the bidder or those furnishing material to bidder pursuant to this contract.

18. Performance Standards

Performance of work and acceptability of equipment or materials supplied pursuant to any contract or award shall be to the satisfaction of the City.

19. Warranties

- (a) All material, labor or equipment provided under the contract shall be warranted by bidder and/or manufacturer for at least twelve (12) months after acceptance by City. Greater warranty protection will be accepted. Lesser warranty protection must be indicated by bidder on the bid proposal as an exception
- (b) Bidder shall be considered primarily responsible to the City for all warranty service, parts and labor applicable to the goods or equipment provided by bidder under this bid or award, irrespective of whether bidder is an agent, broker, fabricator or manufacturer's dealer. Bidder shall be responsible for ensuring that warranty work is performed at a local agency or facility convenient to City and that services, parts and labor are available and provided to meet City's schedules and deadlines. City may require bidder to post a performance bond after contract award to guarantee performance of these obligations.

Bidder may establish a service contract with a local agency satisfactory to City to meet this obligation if bidder does not ordinarily provide warranty service.

20. Addenda

The effect of all addenda to the bid documents shall be considered in the bid, and said addenda shall be made part of the bid documents and shall be returned with them. Before submitting a bid, each bidder shall ascertain whether or not any addenda have been issued, and failure to cover in this bid any such addenda issued may render the bid invalid and result in its rejection.

21. Specifications to Prevail

The detailed requirements of the specifications shall supersede any conflicting reference in these General Provisions that are in conflict therewith.

22. Taxes

The City will furnish Exemption Certificates for Federal Excise Tax. The City is liable for State, City and County Sales Taxes. Do not include this tax in the amount bid. However, tax is to be added by the successful bidder to the net amount invoiced. All or any portion of the City Sales Tax returned to the City will be considered in the evaluation of bids.

23. Conflict of Interest

No City employee or elected or appointed member of City government, or member of the employee's immediate family, may participate directly or indirectly in the procurement process pertaining to this bid if they:

- (a) Have a financial interest or other personal interest that is incompatible with the proper discharge of their official duties in the public interest or would tend to impair their independence, judgment or action in the performance of their official duties.
- (b) Are negotiating for or have an arrangement concerning prospective employment with bidder. The bidder warrants to the best of his knowledge that the submission of the bid will not create such conflict of interest. In the event such a conflict occurs, the bidder is to report it immediately to the Purchasing Agent. For breach or violation of this warranty, the City shall have the right to annul this contract without liability at its discretion, and bidder may be subject to damages and/or debarment or suspension.

24. Gratuities

The City may rescind the right of the bidder to proceed under this agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise are offered or given by the bidder, or any agent or representative of the bidder, to any officer or employee of the City with the intent of influencing award of this agreement or securing favorable treatment with respect to performance of this agreement.

25. Faithful Performance Bond

Successful bidder may be required to furnish the City with a surety bond conditioned upon the faithful performance of the contract. This may take the form of a bond executed by a surety company authorized to do business in the State of California and approved by the City of Chula Vista, an endorsed Certificate of Deposit, or a money order or a certified check drawn on a solvent bank. The bond shall be in a sum equal to one hundred percent (100%) of the amount of the contract price. Such bond or deposit shall be forfeited to the City in the event that bidder receiving the contract shall fail or refuse to fulfill the requirements and all terms and conditions of the contract.

26. Insurance

Should work be required on City premises, bidder shall provide proof of liability and property damage insurance prior to performance of duties. Coverage shall be from a company authorized to transact business in the State of California and shall be in an amount not less than \$1,000,000 combined single limit (CSL), unless otherwise specified. The City of Chula Vista shall be named as an additional insured and thirty (30) days notice of cancellation shall be indicated. Worker's Compensation coverage for each employee engaged in work on City premises is required. Bidder is solely responsible for all insurance premium payments.

27. Indemnification

Bidder shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, employees, and agents, from and against all claims for damages, liability, and expenses (including attorney's fees) arising out of this agreement and/or bidder's performance hereunder, except as to such damages, liability, and expenses due to the sole negligence or willful acts of the City, its officers, employees or agents.

28. Award of Contract

- (a) Bids will be analyzed and award will be made to the lowest, responsive and responsible bidder whose bid conforms to the solicitation and whose bid is considered to be most advantageous to the City, price and other factors considered. Factors to be considered may include, but are not limited to: bidder's past performance, total unit cost, economic cost analysis, life cycle costs, warranty and quality, maintenance cost, durability, the operational requirements of the City and any other factors which will result in the optimum economic benefit to the City.
- (b) The City reserves the right to reject any item or items, to waive informalities, technical defects and minor irregularities in bids received; and to select the bid(s) deemed most

advantageous to the City. The City will, however, consider bids submitted on an “all or nothing” basis if the bid is clearly designated as such.

- (c) The City reserves the right to award one or more contracts on the bids submitted, either by award of all items to one bidder or by award of separate items or groups of items to various bidders as the interests of the City may require, unless the bidder clearly specifies otherwise in his bid.
- (d) For the purpose of evaluating bids for multiple awards, the sum of \$100.00 is considered to be the administrative cost to the City for issuing and administering each contract awarded under this solicitation, and individual awards will be made for the items and combinations of items which result in the lowest aggregate price to the City, including such administrative cost.
- (e) Upon acceptance by the City of Chula Vista, the solicitation, bid, proposal, or price quotation and a purchase order issued to the successful bidder shall be deemed to result in a binding contract incorporating those terms and these General Provisions without further action required by either party. Items are to be furnished as described in the bid and in strict conformity with all instructions, conditions, specifications, and provisions in the complete contract, as defined by this clause 28 or any related integrated agreement.

29. Bid Results

To obtain bid results, either (1) attend bid opening or (2) provide a self-addressed, stamped envelope referencing bid number, and bid tabulation will be mailed to you upon verification of extensions or (3) visit the Purchasing Department no sooner than three (3) working days after bid opening to review bid tabulation. Due to time constraints, bid results cannot be given out over the phone.

30. Protests

Protests by unsuccessful bidders to the selection for award shall be submitted in writing to the Purchasing Agent no later than ten (10) calendar days after award recommendation. The unsuccessful bidder shall have the right to appear at the City Council to protest any award to be confirmed by Council. Failure to submit a timely written protest to the Purchasing Agent shall bar consideration of such protest.

31. Documentation

Due to the time constraints that affect contract performance, all required documents, certificates of insurance and bonds shall be provided to the City within ten (10) calendar days following award or date of request by City, whichever is later. Any failure to comply may result in bid being declared non-responsive and rejected, and at City's option the bid bond may be attached for damages suffered.

32. Discounts

- (a) Prompt payment discounts offered for payment within less than fifteen (15) calendar days will not be considered in evaluating bids for award. However, offered discounts of less than 15 days will be taken if payment is made within the discount period, even though not considered in the evaluation of bids.
- (b) In connection with any discount offered, time will be computed from date of delivery and acceptance, or invoice receipt, whichever is later. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the City check.
- (c) Any discount offered other than for prompt payment should be included in the net price quoted and not included in separate terms. In the event this is not done, the City reserves the right to accept the discount offered and adjust prices accordingly on the Purchase Order.

33. Seller's Invoice

Invoices shall be prepared and submitted in duplicate to address shown on the Purchase Order. Separate invoices are required for each Purchase Order. Invoices shall contain the following information: Purchase Order number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price and extended totals.

34. Inspection and Acceptance

Inspection and acceptance will be at destination unless specified otherwise, and will be made by the City department shown in the shipping address or other duly authorized representative of the City. Until delivery and acceptance, and after any rejection, risk of loss will be on the bidder unless loss results from negligence of the City.

35. Lost and Damaged Shipments

Risk of loss or damage to items prior to the time of their receipt and acceptance by the City is upon the bidder. The City has no obligation to accept damaged shipments and reserves the right to return at the bidder's expense damaged merchandise even though the damage was not apparent or discovered until after receipt of the items.

36. Late Shipments

Bidder is responsible to notify the City department receiving the items and the Purchasing Agent of any late or delayed shipments. The City reserves the right to cancel all or any part of an order if the shipment is not made as promised.

37. Document Ownership

- (a) All technical documents and records originated or prepared pursuant to this contract, including papers, reports, charts, and computer programs, shall be delivered to and

become the exclusive property of the City and may be copyrighted by the City. Bidder assigns all copyrights to City by undertaking this agreement.

- (b) All inventions, discoveries, enhancements, changes, or improvements of computer programs developed pursuant to this contract shall be the property of the City, and all patents or copyrights shall be assigned to City, unless otherwise agreed. Bidder agrees that City may make modifications to computer software furnished by bidder without infringing bidder's copyright or any license granted to City.

38. Advertisements, Product Endorsements

City employees and agencies or organizations funded by the City of Chula Vista are prohibited from making endorsements, either implied or direct, of commercial products or services without written approval of the City Manager. No bidder may represent that the City of Chula Vista has endorsed their product or service without the Purchasing Agent's prior written approval.

39. City Provisions to Prevail

Except as indicated in the specifications, the City's standard General Provisions shall govern any contract award. Any standard terms and conditions of bidder submitted by bidder shall not be acceptable to City unless expressly agreed to by the City. The City reserves the right to reject bidder's bid as non-responsive, to consider the bid without bidder's standard terms and conditions, or to require bidder to delete reference to such as a condition of evaluation or award of the bid. If, after award of contract, bidder (contract vendor) shall provide materials or services accompanied by new or additional standard terms or conditions, they too shall be considered void and City may require deletion as a further condition of performance by vendor. To the extent not otherwise provided for by the contract documents, the California Commercial Code shall apply.

40. Invalid Provisions

In the event that any one or more of the provisions of this agreement shall be found to be invalid, illegal or unenforceable, the remaining provisions shall remain in effect and be enforceable.

41. Amendments and Modifications

The Purchasing Agent may at any time, by written order, and without notice to the sureties, make a modification to the contract or an amendment to the Purchase Order, within the general scope of this contract, in (1) quantity of materials or service, whether more or less; (2) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the City; (3) method of shipment or packing; and (4) place of delivery. If any such change causes an increase or decrease in the cost or the time required for the performance of this contract, an equitable adjustment shall be made by written modification of the contract or amendment to the Purchase Order. Any claim by the bidder for adjustment under this clause must be asserted within 30 calendar days from the notification date.

42. Assignment

Vendor shall not assign or delegate duties or responsibilities under this agreement, in whole or in part, without prior written approval of the City.

43. Disputes

Except as otherwise provided in these provisions, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce this decision to writing and mail a copy to the bidder. The decision of the Purchasing Agent shall be final and conclusive, unless bidder requests mediation within ten (10) calendar days. Pending final decision of a dispute, the bidder shall proceed diligently with the performance of the contract and in accordance with the Purchasing Agent's decision.

44. Mediation

Should an unresolved dispute arise out of this agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within thirty (30) days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a Blindfold@ process.

The cost of mediation shall be borne equally by both parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than sixty (60) days, unless the maximum time is extended by both parties.

45. Lawful Performance

Vendor shall abide by all Federal, State and Local Laws, Ordinances, Regulations, and Statutes as may be related to the performance of duties under this agreement. In addition, all applicable permits and licenses required shall be obtained by the vendor, at vendor's sole expense.

46. Business License

Chula Vista Municipal Code Section 5.02.020 requires all vendors doing business with the City to obtain a Business License. Section 5.02.20 states: *It is unlawful for any person, or for any person as agent, clerk or employee, either for himself or for any other person, within the corporate limits of the City, to transact, engage in, or carry on any business, show, exhibition or game hereinafter specified without first having procured a license.*

47. Annual Appropriation of Funds

Multi-year term supply and service contracts and leases are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase Orders are funded when issued; therefore, they are current expense items and are not subject to any subsequent appropriation of funds.

In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term, and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the City shall not be obligated to make further payments beyond the then current original or renewal term. The City will provide notice of its inability to continue the lease or contract at such time as the Purchasing Agent is aware of the non-appropriation of funds. However, failure to notify does not renew the term of the lease or contract. The City has no monetary obligation in event of termination or reduction of a term contract since such contracts represent estimated quantities and is not funded as a contract except to the extent of the Purchase Orders issued.

48. Extension

When in the City's best interest, this agreement may be extended on a daily, month-to-month, or annual basis by mutual agreement of both parties. Services and/or materials received under an extension shall be in accordance with pricing, terms, and conditions, as described herein.

49. Debarment

The Purchasing Agent may recommend to the City Council that the person or business be debarred from consideration for award of contracts. The period of debarment will be contingent upon the severity of cause. Causes for debarment include:

- (a) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty which directly affects responsibility as a City bidder.
- (b) Violation of contract provisions which is regarded by the Purchasing Agent to be so serious as to justify debarment action, including:
 - (1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
 - (3) Two or more claims of computational error in bid submission within a two year period.
- (c) Debarment by another governmental entity.
- (d) Any other cause the Purchasing Agent deems to be so serious and compelling as to affect responsibility as a City bidder. A bidder may be permanently debarred for the

following causes:

- (1) Collusion in bidding.
- (2) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a contract or subcontract with the City of Chula Vista or in the performance of such contract or subcontract.
- (3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals.

50. Termination

The City may terminate this agreement and be relieved of any consideration to the vendor should vendor fail to perform in the manner required. Furthermore, the City may terminate this agreement for any reason without penalty upon giving thirty (30) days written notice to the vendor. In the event of termination, the full extent of City liability shall be limited to an equitable adjustment and payment for materials and/or services authorized by and received to the satisfaction of the City prior to termination.

51. Venue

This agreement shall be governed by and interpreted according to the laws of the State of California, and venue for any proceeding shall be in the County of San Diego.

(REV 4/10)